

The Global South in Comparative Constitutional Law

Opening remarks on the 50th VRÜ anniversary conference

PHILIPP DANN — 14 July, 2017



While scholarship in comparative constitutional law is booming, [this anniversary conference](#) is an unusual event in at least two ways: It is asking particularly about the role of the Global South in comparative constitutional law, and it does so with a group of speakers that is mixed, if not dominated by voices from the Global South. And indeed: This conference is meant to be not just a reflection of current debates – but rather an intervention and a trigger of more debates. Hence, in this post, I would like to make three brief points: One about the journal, one about comparative constitutional law and its methodological challenges, and one about the urgency to have a truly global conversation in comparative constitutional scholarship. They also represent three impulses for our conferences.

Anniversary of VRÜ

Looking back on 50 years of VRÜ, this is a remarkable story of [a journal](#) that has focused exclusively and explicitly on constitutional developments in the Global South – demonstrating an astonishing level of open-minded curiosity in a country (Germany), where attention to constitutional developments outside the West has generally been low and interest therein rather ignored or pushed to the periphery of legal scholarship. VRÜ is also an unusual project in that it aimed from early on to provide a platform in particular for scholars and voices from these regions, which makes the experience of reading through its various years a particularly rich journey. Finally, editing the VRÜ through 50 years, during which the constitutional developments in these regions were often disappointing, shows a remarkable level not just of persistence but also of idealism, quite an important ingredient of good scholarship too.

But anniversaries are also inflection and reflection points. They provide a good moment to pose some self-critical and tentative questions about discursive directions and epistemic power: What is the role of journals in the North – and concretely this one, run so far almost entirely by Germans? How is a sensible contextualization and reappraisal of its role possible? Who is really asking the questions, framing debates, having conversations? What is the role of printed journals in times of internet, blogs and open access, challenging traditional systems of knowledge distribution? What is the role for

South-South scholarly exchanges and cooperation?

Many such questions could be added that interrogate the epistemic infrastructures and epistemic power in today's scholarship and the conference (as much as VRÜ in future) is precisely designed to offer a venue for discussing them.

Methodological challenges and chances in Comparative Constitutional Law

The second impulse for this conference was to ask about the role and purpose of comparative constitutional law today – and the profound methodological choices that it offers and that we as scholars face. Comparative constitutional law probably never elicited more interest than in these years – as a central device in managing post-conflict situations, reforming constitutional systems, observing migration of ideas and translation of concepts – or simply as a field of rich reward for intellectual curiosity.

At the same time, the discipline can choose from a rich template of methodological offerings, often triggered by the increasingly necessary cooperation with other disciplines: There are the traditional functionalist approaches, which are still central for the pragmatically oriented use of comparative constitutional law. There is the counter-proposal of comparative legal culture and anthropological approaches, which turn comparative studies into much more careful, contextualized and often critical inquiries. There are quantitative approaches and large N studies, based on coding of legal texts around the world, which claim to broaden and flatten the analysis. Emerging more and more are experimental approaches by behavioural scientists, who integrate considerations of human behaviour and psychology. And finally, there are of course critical comparison, infusing a healthy dose of self-reflection, political economy and legal realism into comparative work. Considering this variety, there is much more on offer than a choice between comparative constitutional law or comparative legal studies – and offer depends in particular on which partner discipline one is choosing to go about comparative work.

But the actual question then is: to what end and in pursuance of which kind of world do we engage in comparative constitutional scholarship? As William Twining reminds us, legal scholarship is in the process of re-configuration due to globalization. But one should not forget that it is also an actor in shaping approaches to globalization. Where does comparative constitutional scholarship stand in comparison to other approaches in researching globalization? How does it relate to, engage with transnational law (in the mould of scholars like Peer Zumbansen) or transnational legal ordering (in the mould of Halliday / Shaffer)? What can we learn from the turn to history and comparative approaches in public international law that have both reshaped the way we think about the global – and globalization? Where is comparative constitutional scholarship to be positioned vis-à-vis critical approaches and political economy (as advanced by David Kennedy)?

However one answers these questions, the simple point is that the choice of methods has implications for the questions we ask and the themes we turn our attention to. Let's not underestimate the choices we make in engaging in comparative constitutional scholarship and how we do that.

Global South and the urgency of a truly mutual North-South conversation

The third impulse when organizing this conference was our belief of the urgency to have a truly mutual North-South conversation about constitutional law and politics – as well

as more openness on the part of Northern scholars to listen to South-South conversations. These conversations have already begun and they are growing in strength and complexity. Our meeting here is intended to underline their productivity and value – especially, by the way, for scholars from the North.

Just two thoughts on this: For one, it is worth reflecting on what is actually meant with ‘Global South’, a term that has only become popular in the past 10 years and that is, I would argue, different than that of the ‘Third World’. I see two ways to approach it: One is simply geographical. ‘Global South’ then comprises the constitutional systems in Africa, Asia and Latin America. Looking at this enlarged map of constitutionalism then is simply necessary to pluralize the understanding of constitutionalism. Comparative constitutional law should not just focus on liberal constitutionalism but study the broad variety of constitutionalisms, be they transformative, authoritarian, theocratic or liberal. The other approach to the term Global South is programmatic and critical. Then Global South does not refer to one place but connotes a sensibility to questions of marginalization and exclusion; the notion of Global South then raises questions of justice, which can occur in all places – in Bandung as well as Berlin, in New York as well as New Delhi. In this vein, a Global South focus in comparative constitutional law would align with TWAIL in public international law (or with ideas of Jean and John Comaroff in anthropology). Whichever understanding one prefers, I would argue that the need to temper and overcome the parochialism of Western constitutional thinking is obvious and urgent.

And there is a second point with regard to the urgency of a truly global conversation: I believe it is worth investing efforts into thinking about formats and infrastructures of open conversations and mutual collaboration. Not just the increasingly interdisciplinary nature of comparative legal work requires this, but also simply the comparative dimension of it requires new thinking about collaboration. How can we find interlocutors from relevant jurisdictions, especially from countries in the Global South? How can we form equal and productive teams? How can we sustain interest in projects that by their very nature require patience, critical self-reflection and free communication? I think we are still at the beginning of discovering ways to have such truly global and mutual conversations.

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